

6-077A030

No.

March 14, 1986

Date ... MAR 18 1986

Fee \$

10.00

MAR 18 1986 - 9 32 AM

ICC Washington, D. C.

Mr. James H. Bayne
Secretary

Interstate Commerce Commission
Washington, D.C. 20423

INTERSTATE COMMERCE COMMISSION

DOCUMENTS FOR RECORDATION

Dear Secretary Bayne:

I have enclosed an original and five (5) counterparts of a Subordinated Security Agreement ("Security Agreement"), described below, dated as of March 14, 1986. The Security Agreement is a primary document.

The names and addresses of the parties to the Security Agreement are:

Debtor: The Indiana Rail Road Company
Senate Avenue Terminal
1500 South Senate Avenue
P.O. Box 2464
Indianapolis, Indiana 46206-2464

Secured Parties: Corporation for Innovation Development
("CID"), as Collateral Agent for
Abbott Capital Corporation, R.W.
Allsop & Associates and CID
One North Capitol, Suite 520
Indianapolis, Indiana 46204

A general description of the railway equipment covered by the enclosed Security Agreement is set forth in Schedule A attached to this letter and made a part hereof.

In addition, included in the property covered by the Security Agreement are all other railroad cars, locomotives and other rolling stock or vessels intended for use related to interstate commerce owned by The Indiana Rail Road Company at the date of the Security Agreement or thereafter acquired by it or its successors as owners of the lines of railway covered by Security Agreement.

A check in the amount of Ten Dollars (\$10.00) is enclosed in payment of the filing fee. Please return the original and any extra copies not needed by the Commission for recordation to:

Mr. John R. Thornburgh
ICE MILLER DONADIO & RYAN
One American Square
Box 82001
Indianapolis, Indiana 46282

RECEIVED
MAR 18 9 18 AM '86
FILING UNIT

Mr. James H. Bayne
March , 1986
Page Two

A short summary of the enclosed primary document to appear in the index follows:

Security Agreement between The Indiana Rail Road Company, as Debtor, and the Corporation for Innovation Development ("CID"), as Collateral Agent for Abbott Capital Corporation, R.W. Allsop & Associates and CID, dated March , 1986, and covering eight (8) locomotives and all other railroad cars, locomotives and other rolling stock or vessels of the Debtor, now owned or hereafter acquired.

The undersigned is the President of The Indiana Rail Road Company, a party to the enclosed Security Agreement, and, as such, has knowledge of the matters described in this letter.

Very truly yours,

THE INDIANA RAIL ROAD COMPANY

By Thomas G. Hoback
Thomas G. Hoback, President

SCHEDULE A

Description of Railway Equipment

Eight (8) Diesel-Electric Locomotives, manufactured by the Electro-motive Division of General Motors Corporation, identified as follows:

<u>A.A.R. Mechanical Designation</u>	<u>Identifying Marks</u>	<u>Road No.</u>	<u>Serial No.</u>
none	none	2527	52A102
none	none	2617	7307
none	none	2543	A51-10020
none	none	2539	53C73
none	none	2528	5683
none	none	2515	52J148
none	none	2506	53D87
none	none	2485	52H148

14920

U.S. DEPARTMENT OF COMMERCE Filed 1425

MAR 18 1986 -9 32 AM

INTERSTATE COMMERCE COMMISSION

SUBORDINATED SECURITY AGREEMENT

March 14, 1986.

THE INDIANA RAIL ROAD COMPANY, an Indiana corporation with its principal office at 1500 South Senate Avenue, Indianapolis, Indiana (the "Company"), hereby grants to Corporation for Innovation Development (the "Agent"), as collateral agent for Abbott Capital Corporation, Corporation for Innovation Development and R.W. Allsop & Associates II Limited Partnership (the "Investors") a security interest in all accounts, chattel paper, documents, instruments, goods, equipment, machinery, track, crossties, switches, signals, rail, improvements, structures, railroad cars, locomotives, other rolling stock, furniture, fixtures, general intangibles, inventory, patents, trademarks and minerals and the like (including oil and gas), which may be now owned or hereafter acquired and in the proceeds and products thereof to secure the payment of all present and future liabilities of the Company to the Investors.

In consideration of the credit which has been and which may be extended from time to time by the Investors, the Investors and the Company agree that:

1. Definitions. As used herein:

(a) The term "Liabilities" shall mean any and all obligations in favor of the Investors of every type and description, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising. "Liabilities" shall also include any duty to act or refrain therefrom.

(b) The term "Account Debtor" shall mean the party who is obligated on or under any account, document or instrument.

(c) The term "Collateral" shall mean all property or rights in which a security interest is granted hereunder as specified in the first unnumbered paragraph of this Agreement.

(d) All other terms used in this agreement shall be defined as they are defined in the Uniform Commercial Code as it has been adopted by the state of Indiana.

2. Representations and Warranties. To induce the Investors to enter into this agreement, the Company represents and warrants:

(a) Except for the security interests granted hereunder and those security interests specified on Exhibit A attached hereto, the Company is, and as to Collateral acquired hereafter shall be, the owner of such Collateral free from any lien, security interest or encumbrance, and the Company shall defend all Collateral and proceeds and products thereof against any person claiming an interest in such Collateral adverse to the interest of the Investors.

(b) The Company shall give each of the Investors written notice of each location at which Collateral is or will be kept at all times. Except where such notice is given, all Collateral is and shall be kept at the address of the Company appearing at the beginning of this Agreement.

(c) The Company shall give the Investors written notice of each office of the Company at which records of the Company relative to accounts, documents and instruments are kept. Except for such notices given, all records of the Company relative to accounts, documents and instruments are and shall be kept at the address of the Company appearing at the beginning of this agreement and the Company shall not, without the written consent of the Investors, duplicate any accounts, documents or instruments at any other address.

3. Perfection of Security Interest. The Company authorizes the Agent, at the expense of the Company, to sign and file, without the Company's signature, a financing statement or statements on its behalf in those public offices deemed necessary by the Investors to perfect its security interest in the Collateral of the Company granted herein. In addition, the Company agrees to do such other acts and things and deliver or cause to be delivered such other documents as the Investors may deem necessary to establish and maintain the valid security interest in the Collateral.

4. Insurance. The Company shall have and shall at all times maintain with respect to the Collateral and evidences thereof insurance covering risks customarily insured against by companies engaged in business similar to that of the Company, in amounts, containing such terms, in such form for such periods and written by companies acceptable to the Investors. Such insurance shall be payable to the Company and to the Investors as their interests may appear. The insurance policy or policies or copies thereof evidencing the Company's compliance with the above shall be deposited with the Investors, and in the event the Company fails to file and maintain such insurance, the Investors may, at their option, purchase such insurance and the cost of such insurance shall become a liability of the Company in favor of the Investors.

5. Inspection. The Company shall, at all reasonable times, allow the Investors and their officers, attorneys and accountants to examine, inspect or make abstracts from the Company's books and records and to verify inventory both as to quantity and quality and to arrange for verification of accounts, under reasonable procedures, directly with the Account Debtors or by other methods; and shall do, make and deliver all such additional and further acts, things, deeds, assurances and instruments as the Investors may require to further protect their interests in or rights to the Collateral.

6. Rights and Duties of the Company. Until such time as the Investors shall notify the Company of the revocation of such authority, the Company:

(a) May, in the ordinary course of business, at its own expense, sell, lease or furnish under contracts of service, any of the inventory normally held by the Company for such purpose (a sale in the ordinary course of business does not include a transfer in total or partial satisfaction of a debt), and may use and consume, in the ordinary course of business, any raw materials, work in process or materials normally held by it for such purpose;

(b) Shall, at its own expense, endeavor to collect, as and when due, all amounts due with respect to any Collateral, including the taking of such action with respect to such collection as the Investors may reasonably request or, in the absence of such request, as the Company may deem advisable;

(c) May grant, in the ordinary course of business, to any Account Debtor, any rebate, refund or adjustment to which such Account Debtor may be lawfully entitled, and may accept, in connection therewith, the return of goods, the sale or lease of which shall have given rise to the obligation of the Account Debtor; and

(d) Shall deliver to the Investors all chattel paper which constitutes proceeds from the sale of Collateral subject to delivery of the proceeds resulting from the sale of such chattel paper which shall be deposited in a collateral account.

7. Rights of the Investors. The Investors shall have all rights granted to them under the Uniform Commercial Code as it has been adopted by the State of Indiana.

8. Marshalling of Collateral. Upon a default of the Company of its obligations hereunder and upon request of the Investors, the Company shall assemble all Collateral and make it available to the Investors at a place to be designated by the Investors which is reasonably convenient to the Investors and the Company.

9. Default. Time, and each of the terms, conditions and covenants contained herein are the essence of this Agreement. If a default in respect to the terms and conditions of the governing instrument or agreement for any of the Liabilities shall occur, the Investors, at their option and upon demand shall have the right to declare all Liabilities due and immediately payable. If a default in respect to the terms and conditions of this Agreement or any instrument or agreement governing any of the Liabilities shall occur and shall not be cured within thirty (30) days or if the Company shall violate or breach any of its warranties, representations or covenants contained in any such instrument or agreement, shall be dissolved or liquidated or terminate its business, shall become insolvent or fail to pay its debts as they mature in the ordinary course of business, shall make an assignment for the benefit of its creditors, or if a receiver or custodian shall be appointed for it or any of its assets or a petition for relief is filed in a Federal Bankruptcy Court, the Agent, at its option and upon demand, shall have the right to declare all Liabilities due and immediately payable. If at any time the Agent elects to employ attorneys relating to collection of any of the Liabilities or protection of any security for any of the Liabilities, the Agent shall be entitled to immediate reimbursement from the Company for all reasonable attorneys' fees and expenses incurred in regard thereto, or the Agent may, at its option, elect to add said attorneys fees and expenses to the Liabilities.

10. Expenses; Proceeds of Collateral. The Company shall pay the Investors, on demand, any and all expenses, including reasonable attorneys' fees, incurred or paid by the Investors in protecting or enforcing their rights upon or under Liabilities or Collateral. After deducting all of said expenses, the residue of any proceeds of collection or sale of Collateral shall be applied to the payment of principal or interest on Liabilities in such order or preference as the Investors may determine, proper allowance for interest on Liabilities not then due being made, and any excess shall be returned to the Company.

11. Subordination. This Agreement and all rights, remedies, and powers of the Agent and the Investors hereunder are and shall be in all respects junior and subordinate to (i) the lien of and security interests created by the Indenture of Mortgage, Deed of Trust and Security Agreement dated as of March 10, 1986 (the "First Mortgage") from the Company to 1st Source Bank, as Trustee, for the benefit of 1st Source Bank and Lincoln National Direct Placement Fund, Inc. (the "First Mortgagees") and (ii) the rights, remedies and powers of the First Mortgagees under the First Mortgage. So long as the First Mortgage remains in effect, the Agent and the Investors will not exercise or attempt to exercise any right or remedy for the enforcement of the security interests created by this Agreement without the prior written consent of the First Mortgagees. This Agreement may not be amended or modified in any respect without the prior written consent of the First Mortgagees.

12. General. Any demand upon or notice to the Company that the Agent or any of the Investors may elect to give shall be effective if deposited in the United States mail or delivered to a telegraph service addressed to the Company at the address shown at the beginning of this Agreement or, if the Company has notified the Investors in writing of a change of address, to the Company's last address so notified. Demands or notices addressed to the Company's address at which the Investors customarily communicate with the Company shall also be effective. If at any time or times, by assignment, or otherwise, the Investors transfer any Liability and Collateral therefor, such transfer shall carry with it the Investors' powers and rights under this Agreement with respect to the Liability and Collateral transferred, and the transferee shall become vested with said powers and rights whether or not said powers and rights are specifically referred to in the transfer agreement. If and to the extent the Investors retain any other Liability or Collateral, the Investors shall continue to have the rights and powers herein set forth with respect hereto. This shall be a continuing Agreement in every respect. This Agreement and all rights and all obligations hereunder, including matters of construction, validity and performance, shall be governed by the Uniform Commercial Code and other applicable laws of the State of Indiana. Whenever possible each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition without invalidating the remainder of such provision or the remaining

provision of this Agreement. The rights and privileges of the Investors shall inure to the benefit of their respective successors and assigns.

THE INDIANA RAIL ROAD COMPANY

By: Thomas G. Hoback
Thomas G. Hoback, President

Attest:

Carl M. Miller
Carl M. Miller, Secretary

STATE OF Illinois)
COUNTY OF Cook) SS:

Subscribed and sworn to before me, a Notary Public, in and for said County and State, this 14 day of March, 1986.

Marion Gerrans
(Written Signature)

MARION GERRANS
(Printed Signature)

Notary Public

My commission expires:

8/22/88

My county of residence is:

Cook